

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

COBRO CORPORATION

Employer

and

LOCAL LODGE 2424, DISTRICT LODGE 12,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Petitioner

Case 5-RC-15023

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute an appropriate voting group :

All full-time and regular part-time Junior Test Specialists employed by the Employer at its Aberdeen, Maryland facility, excluding all office clerical employees, all other employees, guards and supervisors as defined in the Act.

6. If a majority of the employees in the above voting group vote "YES", they will be taken to have indicated their desire to be included in the production and maintenance unit currently represented by the Petitioner. If a majority of the employees in the voting group vote "NO", they will be taken to have indicated their desire to remain unrepresented.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the above voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged

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in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

**LOCAL LODGE 2424, DISTRICT 12, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by
June 23, 2000

Dated June 9, 2000

at Baltimore, Maryland

Regional Director, Region 5



The Employer, COBRO Corporation, is a Maryland corporation and has a contract with the U. S. Government to provide information management, logistics and data collection services to various divisions of the Department of Defense. The operation concerned herein is testing functions performed at the Aberdeen Proving Grounds located in Aberdeen, Maryland. In an earlier case, Case 5-RC-14481, Petitioner was certified as the representative for all full time and regular part-time data collectors/coordinators and test coordinators at the Aberdeen facility. A copy of the Decision and Direction of Election leading to the certification in that case is attached hereto. Petitioner and the Employer are parties to a collective bargaining agreement covering these employees. The most recent contract is for the period of January 1, 2000, to December 31, 2002.

Petitioner, which currently represents the employee classifications noted above, seeks an election among the junior test specialists employed at the Aberdeen facility. Petitioner seeks to represent the junior test specialists in either a separate unit or through a self-determination election among these employees to determine whether they desire to be merged with the employees currently represented by Petitioner. The Employer contends the junior test specialists are supervisory within the meaning of Section 2(11) of the Act, and, should the classification be found to be non-supervisory, no election should be directed because of an anticipated expansion of the number of employees within this classification.

In performing the data collection work, the Employer utilizes approximately 68 data collectors and data collector/coordinators, project coordinators, word processors and junior test specialists. The duties of a data collector include collecting data on military equipment undergoing developmental testing, taking meter readings, recording all data – basically, collecting information on everything that is affecting a vehicle being tested, such as parts breakage, time spent in removal and replacement. The difference between data collectors and data collector/coordinators is essentially skill level. The Employer's representative, Carl Jensen, testified that the creation of the position of junior test specialist was urged and approved by the government representatives some time back. Jensen posted the first two positions in early May 2000 and shortly thereafter filled three more positions. The employees holding the position of Junior Test Specialist are Mesdames Regina Hornberger, Shirley Koch, Paula Cook, Jane Horton and Uguste Dunnick. All of these individuals formerly served as data collector/coordinators. Additionally, the Employer intends to promote 4 more individuals as Junior Test Specialists for a 3-4 week period in June 2000. These positions are temporary only and will not continue after the 4-week period unless the department of the Army decides to reinstitute them.

In support of its position that the Junior Test Specialists are supervisory, the Employer alludes to the job description, which each individual reviewed and signed, which references that the Junior Test Specialist, in addition to perform data collection, preparing test data sheets, researching technical questions and other duties associated with data collectors, will "represent the Test Engineer in the field and maintain property records". The Test Engineer, sometimes called Test Director, is an employee of the Department of the Army and is in charge of all testing within the programs being carried out. There are two Test Engineers on each of the programs. Jensen testified that the Junior Test Engineer was intended to have supervisory responsibilities and the Junior Test Specialist will act in the absence of the Test Engineer. Jensen interpreted that to mean when the Test Engineer is not there, the Junior Test Specialist can make decisions for the Test Engineer, but, in view of the

short time the specialists have been in the job, he did not believe the Test Engineers felt the specialists knew everything they needed to know. At the testing sites, the mechanics, drivers, etc., are not employees of COBRO. Jensen acknowledged the current Junior Test Specialists do not exercise any of the indicia of supervisory authority, that none were advised at the time of the promotion they had such duties.

Ms. Uguste Dinnick, a Junior Test Specialist, testified she was not told she was a supervisor when she was hired or that she could hire, fire, or effectively recommend changes in employees' status. She was not told she would be a stand-in for the Test Engineer. Since becoming a Junior Test Specialist she continues to perform the same data collection duties she did previously. She was not advised there would be any further training for supervisory functions, was not given any supervisor/employee manuals and wears no item of clothing or insignia identifying her as a supervisor. Ms. Dinnick said there are two Test Engineers on her program and one is at the job site all of the time. Queried as to the statement in the job description that one of her duties would be to "represent the test engineer in the field," Ms. Dinnick stated that it meant to her if the test engineer wanted her to dictate anything to be done that he needed done while not there, that is what she would do.

Temporary Junior Test Specialists

As noted above, the Employer asserts the four temporary Junior Test Specialist are to be promoted for the month of June. The four individuals will come from the data collector/coordinators currently employed by the Employer at the Aberdeen site. There is for a rather large test that will be conducted that month at two test sites and there will be two twelve-hour shifts. A substantial number of new data collectors will be hired in anticipation of the test. The test will last for one month and it may be held again in August or October, but there is no certainty on this point. The temporary Junior Test Specialist will be the immediate supervisor for the 6 data collection and data collection/coordinators working on the June test program. However, there is no evidence in the record regarding what supervisory duties, if any, these temporary Junior Test Specialists will be performing. Rather it appears that they will be, in essence, training the new data collectors during the running of the test program.

Conclusion

Section 2(11) of the Act, 29 U.S.C. Section 152, states:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In determining whether a person is a statutory supervisor, the Board holds that a person must possess only one of the specific responsibilities listed in Section 2(11). Applying Section 2(11) to the

duties and responsibilities of any given person requires that the Board determine whether the person in question exercises any of the functions listed in Section 2(11), uses independent judgment in performing any of those supervisory functions, and does so in the interest of management. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect."

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, setup men and other minor supervisory employees." See **Senate Rep. No. 105, 80th Cong., 1st Sess. 4**, reprinted in **1 NLRB Legislative History of the Labor Management Relations Act, 1947**. The Board has long recognized "there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer's plants and who incidentally direct the movements and operations of less skilled subordinate employees," who nevertheless are not supervisors within the meaning of the Act, since their authority is based on their working skills and experience. Southern Bleachery & Print Works, Inc., 115 NLRB 787, 791 (1956), enf'd. 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enf'd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961); Koons Ford of Annapolis, 282 NLRB 506, 513-514 (1986), enf'd. 833 F.2d 310 (4th Cir. 1987), cert. denied 485 U.S. 1021, 128 LRRM 2144 (1988).

Moreover, the party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, 295 NLRB 390, 393 (1989): "in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists. Tucson Gas & Electric Co., 241 NLRB 181 (1979)." Accord: The Dickinson-Iron Community Action Agency, 283 NLRB 1029, 1034 (1987). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Furthermore, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

While the exercise of the functions identified in Section 2(11) is determinative for the purposes of establishing supervisory status, the Board and the Courts will also look to other factors to reinforce that determination. These factors include the wearing of a uniform or other distinguishing clothing, the percentage of time spent performing work done by bargaining unit employees, receipt of an hourly wage or salary, employees' perception of the status of the alleged supervisor and the ratio of supervisors to employees. The specific job title of the employee involved is not in itself controlling. Whether an employee is a supervisor is to be determined in light of the employee's **actual** authority, responsibility and relationship to management. Although a supervisor may have potential powers, paper power will not suffice. Tables of organization and job descriptions do not vest powers.

The record clearly establishes the junior test specialists perform essentially the same duties as they had before their promotions – duties and job classifications that are part of the represented unit. They work the same hours, wear the same clothing, receive the same benefits and have never been told they were supervisors or exercised any of the supervisory powers. The Employer's argument that the junior test specialists are statutory supervisors rests largely on a single line in the job description to the effect that the individuals may act for the test engineer. Neither Mr. Jensen nor Ms. Dunnick could describe any significant changes, if indeed any, in the actual duties of the junior test specialist after their alleged promotion to supervisor.

In view of the foregoing, I find that Mesdames Regina Hornberger, Shirley Koch, Paula Cook, Jane Horton and Uguste Dunnick are not supervisors and are eligible to vote in the election directed herein.

The junior test specialists, all former data collector/coordinators, are sought to be represented by a union which currently represents employees in this classification. Moreover, the record clearly establishes that the junior test specialists are performing essentially the same job duties as they had before they assumed the junior test specialist classification. In these circumstances, and as these employees have interest in common with the represented employees, it is established Board policy to establish them in a voting group to determine their desires as to inclusion in the represented unit. See Weyerhaeuser Company, 173 NLRB 1170 (1968). Accordingly, an election is directed among the junior test specialists and if the majority of the employees in such voting group vote for Petitioner, they shall be deemed to constitute a part of the existing unit of data collectors/coordinators and data collectors.

Expanding Unit

The Employer contends that, if the junior test specialists are found to be non-supervisory, no election should be directed because of an anticipated expansion of the number of employees within this classification. At the time of the hearing, there were five employees permanently designated as Junior Test Specialist. Carl Jensen, the Program Manager for COBRO at the Aberdeen job site, testified that four additional employees would be selected as Junior Test Specialist and that they would serve during a 3 or 4 week period in June. The appointments were temporary in nature and would not continue after the completion of a major test program scheduled to last for 3-4 weeks. Jensen stated that these junior test specialists would be supervisors and would supervise 6 data collectors during this period. The data collectors will be new and the junior test specialists will be training them. Once the test program, a month in duration, is completed, the temporary junior test specialists will revert to their data collector/coordinator position. There is a possibility that additional testing may be done in August or in October, but the Department of the Army has given no assurances to the Employer on that issue.

A consideration of all the facts in the case indicates that the Employer is currently in operation with a permanent work force that includes the five junior test specialists. The expected introduction of four junior test specialists is for a temporary time period (3-4 weeks) at which time the holders of these job will return to their positions as data collector/coordinators, a classification already represented by Petitioner. The likelihood of their attaining permanent status as permanent Junior

Test Specialist is speculative or uncertain at best. Accordingly, the Employer's request to postpone any election because of an "expanding unit" is denied. Moreover, in light of the foregoing, those Junior Test Specialists, denominated as "temporary" in nature for the June test program, will be ineligible to vote in the election directed herein.

Although the Employer requested, and received, an extension of time within which to file a brief in this matter, it did not file a brief.

177-8580-3800; 362-6700; 355-2201-5000